

2005 ASSEMBLY BILL 75

1 **AN ACT** *to amend* 157.055 (2) (intro.); and *to create* 15.407 (8), 440.08 (2) (a)
2 24m. and subchapter VI of chapter 440 [precedes 440.70] of the statutes;
3 **relating to:** regulating the cremation of human remains, creating a Crematory
4 Authority Council, granting rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 15.407 (8) of the statutes is created to read:
6 15.407 **(8)** CREMATORY AUTHORITY COUNCIL. There is created a crematory
7 authority council in the department of regulation and licensing consisting of the
8 secretary of regulation and licensing or a designee of the secretary, who shall serve
9 as a nonvoting member, and the following persons appointed for 3-year terms:
10 (a) Three persons licensed as funeral directors under ch. 445 who operate
11 crematories.

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1 (b) Three representatives of cemetery authorities, as defined in s. 157.061 (2),
2 who operate crematories.

3 (c) One public member.

4 **SECTION 2.** 157.055 (2) (intro.) of the statutes is amended to read:

5 157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3),
6 (3m), and (4), 979.02, and 979.10, and subch. VI of ch. 440, during a period of a state
7 of emergency related to public health declared by the governor under s. 166.03 (1) (b)
8 1., a public health authority may do all of the following:

9 **SECTION 3.** 440.08 (2) (a) 24m. of the statutes is created to read:

10 440.08 (2) (a) 24m. Crematory authority: January 1 of each even-numbered
11 year; \$53.

12 **SECTION 4.** Subchapter VI of chapter 440 [precedes 440.70] of the statutes is
13 created to read:

14 **CHAPTER 440**

15 **SUBCHAPTER VI**

16 **CREMATORY AUTHORITIES**

17 **440.70 Definitions.** As used in this subchapter:

18 (1) “Authorization form” means a form specified in s. 440.73.

19 (3) “Business entity” has the meaning given in s. 452.01 (3j).

20 (4) “Columbarium” means a building, structure, or part of a building or
21 structure that is used or intended to be used for the inurnment of cremated remains.

22 (5) “Cremated remains” means human remains recovered from the cremation
23 of a human body or body part and the residue of a container or foreign materials that
24 were cremated with the body or body part.

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1 **(6)** “Cremation” means the process of using heat to reduce human remains to
2 bone fragments and includes processing or pulverizing the bone fragments.

3 **(7)** “Cremation chamber” means an enclosed space within which cremation
4 takes place.

5 **(8)** “Crematory” means a building or portion of a building within which a
6 cremation chamber is located.

7 **(9)** “Crematory authority” means a person who owns or operates a crematory.

8 **(10)** “Funeral director” has the meaning given in s. 445.01 (5).

9 **(11)** “Funeral establishment” has the meaning given in s. 445.01 (6).

10 **(12)** “Human remains” means the body or part of the body of a deceased
11 individual.

12 **(13)** “Incapacitated” means unable to receive and evaluate information
13 effectively or to communicate decisions.

14 **(14)** “Niche” means a space in a columbarium that is used or intended to be used
15 for the inurnment of cremated remains.

16 **440.71 Registration; renewal. (1) PROHIBITION.** No person may cremate
17 human remains unless the department has registered the person as a crematory
18 authority under sub. (2).

19 **(2) REGISTRATION.** The department shall register a person as a crematory
20 authority if the person does all of the following:

21 (a) Pays the fee specified in s. 440.05 (1).

22 (b) Submits an application on a form provided by the department that includes
23 all of the following:

24 1. The name and address of the applicant or the business entity that the
25 applicant represents.

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1 2. The address of the crematory.

2 3. A description of the structure and equipment proposed to be used in
3 operating the crematory.

4 4. Any other information that the department may require.

5 **(3) RENEWAL.** Renewal applications shall be submitted to the department on
6 a form provided by the department on or before the applicable renewal date specified
7 under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under
8 s. 440.08 (2) (a).

9 **440.73 Authorization forms.** A person who is authorized to direct the
10 cremation of the human remains of a decedent may do so only by completing a form
11 that includes all of the following:

12 **(1)** The name of the decedent and the date and time of the decedent's death.

13 **(2)** The name of the person directing the cremation and his or her relationship
14 to the decedent.

15 **(3)** A statement that the person directing the cremation has the authority to
16 direct the cremation.

17 **(4)** A statement that the person directing the cremation has no reason to
18 believe that the decedent's remains contain a device that may be hazardous or cause
19 damage to the cremation chamber or an individual performing the cremation.

20 **(5)** The name of the funeral director, funeral establishment, or cemetery that
21 the person directing the cremation authorizes to receive the cremated remains or, if
22 alternative arrangements are made for receiving the cremated remains, a
23 description of those arrangements.

24 **(6)** If known by the person directing the cremation, the manner in which the
25 cremated remains are to be disposed.

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1 **(7)** An itemized list of valuables on the decedent's person that are to be removed
2 prior to cremation and returned to the person directing the cremation.

3 **(8)** If a viewing or other services are planned, the date and time of the viewing
4 or services.

5 **(9)** The signature of the person directing the cremation attesting to the
6 accuracy of the representations contained on the form.

7 **440.75 Liability of a person who directs the cremation of human**
8 **remains.** A person who directs the cremation of human remains is liable for
9 damages resulting from authorizing the cremation of the human remains of a
10 decedent.

11 **440.76 Revocation of authorization.** Before a cremation is performed, a
12 person directing the cremation of human remains may cancel the cremation by
13 providing the crematory authority with a written statement revoking the
14 authorization form. A person who revokes an authorization form shall provide the
15 crematory authority with written instructions regarding the final disposition of the
16 human remains.

17 **440.77 Delivery and acceptance of human remains. (1) RECEIPT FOR**
18 **DELIVERY.** A crematory authority that receives human remains from a person shall
19 provide the person with a receipt that includes all of the following:

20 (a) The name of the decedent.

21 (b) The date and time that the human remains were delivered.

22 (c) A description of the type of casket or container in which the human remains
23 were delivered.

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1 (d) The name of the person who delivered the human remains and the name
2 of the funeral establishment or other business entity, if any, with which the person
3 is affiliated.

4 (e) The name of the person who received the human remains on behalf of the
5 crematory authority and the name of the funeral establishment or other business
6 entity, if any, with which the crematory authority is affiliated.

7 (f) The signature of the person who delivered the human remains.

8 (g) The signature of the person who received the human remains on behalf of
9 the crematory authority.

10 **(2) ACCEPTANCE OF HUMAN REMAINS.** (a) A crematory authority may not refuse
11 to accept delivery of human remains solely on the basis that the human remains have
12 not been placed in a casket or have not been embalmed.

13 (b) A crematory authority may refuse to accept delivery of human remains if
14 any of the following apply:

15 1. The casket or other container used for the human remains has evidence of
16 leakage of bodily fluids.

17 2. The crematory authority has knowledge of a dispute regarding the cremation
18 of the human remains, unless the crematory authority receives a copy of a court order
19 or other documentation indicating that the dispute has been resolved.

20 3. The crematory authority has reason to believe that a representation of the
21 person directing the cremation of human remains is not true.

22 4. The crematory authority has reason to believe that the human remains
23 contain a device that may be hazardous or cause damage to the cremation chamber
24 or an individual performing the cremation.

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1 **440.78 Cremation requirements. (1) DOCUMENTATION.** A crematory
2 authority may not cremate the human remains of a decedent unless the authority
3 has received all of the following:

4 (a) A completed authorization form.

5 (b) A copy of the cremation permit issued under s. 979.10 (1) (a).

6 (c) If a report for final disposition of a human corpse is required under s. 69.18
7 (3), a copy of the report.

8 **(2) HOLDING FACILITY.** (a) Upon accepting delivery of human remains, a
9 crematory authority shall place the human remains in a holding facility until they
10 are cremated, except that, if the crematory authority obtains knowledge of a dispute
11 regarding the cremation of the human remains, the crematory authority may, until
12 the dispute is resolved, return the human remains to the person who delivered the
13 human remains or the funeral establishment or other business entity with which
14 that person is affiliated, neither of which may refuse to accept the human remains.

15 (b) A crematory authority shall restrict access to a holding facility to authorized
16 personnel.

17 **(3) CASKETS AND OTHER CONTAINERS.** (a) A crematory authority may not require
18 human remains to be placed in a casket before cremation or to be cremated in a
19 casket.

20 (b) Unless a crematory authority obtains the prior written consent of the person
21 directing the cremation, and except as provided in par. (c), a crematory authority
22 shall cremate with human remains the casket or other container holding the human
23 remains or destroy the casket or other container.

24 (c) A container may be used to hold human remains that are to be cremated only
25 if the container is composed of readily combustible materials that are resistant to

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1 leakage and spillage, has the ability to be closed for complete covering of the human
2 remains, is sufficiently rigid to provide ease in handling, and is able to protect the
3 health and safety of crematory personnel.

4 **(4) VIEWINGS OR OTHER SERVICES.** A crematory authority may not cremate
5 human remains before the date and time specified in an authorization form under
6 s. 440.73 (8).

7 **(5) SIMULTANEOUS CREMATION.** A crematory authority may not simultaneously
8 cremate the human remains of more than one decedent within the same cremation
9 chamber unless the crematory authority receives the prior written consent of the
10 person directing the cremation of each decedent.

11 **(6) RESIDUE REMOVAL.** Upon completion of each cremation, a crematory
12 authority shall, insofar as practicable, remove all of the cremated remains from the
13 cremation chamber.

14 **(7) CONTAINERS FOR CREMATED REMAINS.** A container may be used to hold
15 cremated remains only if all of the following are satisfied:

16 (a) Except as provided in sub. (8), the container is a single container of sufficient
17 size to hold the cremated remains.

18 (b) The container may be closed in a manner that prevents the entrance of
19 foreign materials and prevents leakage or spillage of the cremated remains.

20 **(8) EXCESS REMAINS; ADDITIONAL CONTAINER.** If cremated remains that a
21 crematory authority recovers from a cremation chamber do not fit within the
22 container that the person who directed the cremation has selected, the crematory
23 authority shall return the remainder of the human remains in a separate container
24 to the person who directed the cremation or to that person's designee.

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1 **(9) IDENTIFICATION SYSTEM.** A crematory authority shall maintain an
2 identification system that ensures the identity of human remains throughout all
3 phases of the cremation process.

4 **440.79 Deliveries of cremated remains.** A crematory authority may deliver
5 cremated remains to another person only by making the delivery in person or by
6 using a delivery service that has a system for tracking the delivery. The crematory
7 authority shall obtain a signed receipt from the person to whom the cremated
8 remains are delivered. The crematory authority shall ensure that the receipt
9 includes all of the following:

10 (a) The name of the decedent.

11 (b) The date and time that the cremated remains were delivered.

12 (c) The name and signature of the person to whom the cremated remains were
13 delivered and the name of the funeral establishment or other business entity, if any,
14 with which the person is affiliated.

15 (d) The name and signature of the person who delivered the cremated remains
16 on behalf of the crematory authority.

17 **440.80 Disposition of cremated remains. (1) RESPONSIBLE PARTY.** (a)
18 Except as provided in par. (b), the person directing the cremation is responsible for
19 determining the manner in which cremated remains are disposed.

20 (b) If the person directing the cremation fails to determine the manner in which
21 cremated remains are disposed, the crematory authority shall, no sooner than 30
22 days after cremation, deliver the cremated remains to the person who delivered the
23 human remains to the crematory authority for cremation or the funeral
24 establishment or other business entity with which that person is affiliated, neither
25 of which may refuse to accept the cremated remains. No sooner than 60 days after

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1 the cremated remains are delivered under this paragraph, the person to whom they
2 are delivered may determine the manner in which the cremated remains are
3 disposed and shall make a written record of any determination that is made.

4 (c) The person directing the cremation or the decedent's estate, or both, are
5 liable for all reasonable expenses incurred in delivering and disposing of cremated
6 remains under par. (b).

7 **(2) MANNER OF DISPOSITION.** A person may dispose of cremated remains only in
8 one of the following manners:

9 (a) Placing the remains in a grave, niche, or crypt.

10 (b) Disposing of the remains in any other lawful manner, but only if the remains
11 are reduced to a particle size of one-eighth inch or less.

12 **(3) COMMINGLING.** Without the prior written consent of each person directing
13 the cremation, no person may place cremated remains of more than one individual
14 in the same container.

15 **(4) PROHIBITED SALES.** A crematory authority may not do any of the following:

16 (a) Sell any material or device, including a prosthetic or medical device of a
17 decedent, that is obtained from cremating the human remains of the decedent.

18 (b) Resell any casket or other container that has been used for cremating
19 human remains.

20 **440.81 Records. (1)** A crematory authority shall maintain a permanent
21 record of each cremation at its place of business consisting of the name of the
22 decedent, the date of the cremation, and a description of the manner in which the
23 cremated remains are disposed.

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1 **(2)** A crematory authority shall maintain as permanent records the
2 documentation specified in s. 440.78 (1) and copies of receipts under ss. 440.77 (1)
3 and 440.79.

4 **440.82 Exemptions from liability.** **(1)** Except as provided in sub. (2), a
5 crematory authority is immune from civil liability for damages resulting from
6 cremating human remains, including damages to prosthetic or medical devices or
7 valuables of the decedent, if the authority has complied with the requirements of this
8 subchapter.

9 **(2)** A crematory authority is liable for damages resulting from the authority's
10 intentional misconduct, negligent conduct, or failure to return valuables specified on
11 an authorization form under s. 440.73 (7).

12 **440.83 Electronic transmission permitted.** Any statement required to be
13 in writing under s. 440.76, 440.78 (3) (b) or (5), or 440.80 (3) may be transmitted by
14 facsimile.

15 **440.84 Rules.** The department may promulgate rules interpreting or
16 administering the requirements of this subchapter.

17 **440.85 Discipline.** **(1)** Subject to the rules promulgated under s. 440.03 (1),
18 the department may make investigations, including inspections, or conduct hearings
19 to determine whether a violation of this subchapter or any rule promulgated under
20 this subchapter has occurred.

21 **(2)** Subject to the rules promulgated under s. 440.03 (1), the department may
22 reprimand an individual registered under this subchapter or deny, limit, suspend,
23 or revoke a registration under this subchapter if the department finds that the
24 applicant or individual has done any of the following:

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1 (a) Made a material misstatement in an application for a registration or
2 renewal of a registration.

3 (b) Engaged in conduct while practicing as a crematory authority that
4 evidences a lack of knowledge or ability to apply professional principles or skills.

5 (c) Subject to ss. 111.321, 111.322, and 111.335, been arrested or convicted of
6 an offense committed while registered under this subchapter.

7 (d) Advertised in a manner that is false, deceptive, or misleading.

8 (e) Advertised, practiced, or attempted to practice as a crematory authority
9 under another person's name.

10 (f) Violated this subchapter or a rule promulgated under this subchapter.

11 **440.86 Penalties. (1)** Any person who violates this subchapter or a rule
12 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned
13 for not more than 6 months or both.

14 **(2)** In addition to or in lieu of the penalties under sub. (1) and the remedies
15 under s. 440.85 (2), any person who violates this subchapter or a rule promulgated
16 under this subchapter may be required to forfeit not more than \$1,000 for each
17 violation. Each day of continued violation constitutes a separate violation.

18 **440.87 Exceptions.** This subchapter does not apply to a person who is
19 performing his or her duties as an officer of a public institution, medical school,
20 medical college, county medical society, anatomical association, or accredited college
21 of embalming, or to a person acting in accordance with a statute prescribing the
22 conditions under which donated or indigent dead human bodies are held subject for
23 anatomical study, or to a person who is acting according to the burial customs or rites
24 of a religious sect to which the person belongs or subscribes.

